UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

MID-TOWN LAUNDRY, LLC AND STATE-ALBANY PROPERTIES, LLC, **Plaintiffs,** **vs.** **ROSALIE DONATO AND JOHN DOES 1 THROUGH 10 (said names being fictitious operators),** **Defendants.**	**Civil Action No.** 1:17-cv-338 (BKS/TWD) **COMPLAINT**

Plaintiffs, Mid-Town Laundry, LLC, and State-Albany Properties, LLC (hereinafter collectively referred to as "Plaintiffs"), by way of complaint against defendants, Rosalie Donato and John Does 1-10 (said names being fictitious operators) (collectively referred to as "Defendants") says:

THE PARTIES

1. Plaintiffs, Mid-Town Laundry, LLC, and State-Albany Properties, LLC (hereinafter collectively referred to as "Plaintiffs"), are the current owners and operators of a coin-operated laundromat located at 1122-1124 State Street in Schenectady, New York (hereinafter referred to as the "Mid-Town Laundry Site").

2. Defendant, Rosalie Donato was the former owner and operator of a dry cleaning business located at the Mid-Town Laundry Site that utilized and stored tetrachloroethane

("PCE"), tricholoroethene ("TCE"), 1,2-dichloroethene ("DCE") and other related chlorinated solvents on a daily basis at the Mid-Town Laundry Site from approximately 1969 to 1987.

3. Defendants, John Does 1 through 10 are fictitious operators of the site that is the subject of this action.

JURISDICTION AND VENUE

4. This Court has federal question jurisdiction over this Complaint pursuant to 28 U.S.C. §1331 and 42 U.S.C. §9607.

5. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9607 insofar as the claims asserted are alleged to have arisen in the Northern District of New York, and the alleged "release" of hazardous substances is claimed to have occurred at the Mid-Town Laundry Site located in this District in the City of Schenectady.

BACKGROUND AND NATURE OF THIS ACTION

The Contamination of the Mid-Town Laundry Site

6. Defendant, Rosalie Donato operated a dry cleaning business that utilized and stored PCE, TCE, DCE and other related chlorinated solvents on a daily basis at the Mid-Town Laundry Site from approximately 1969 to 1987.

7. A site investigation conducted and a report issued by the New York State Department of Environmental Conservation (hereinafter referred to as the "DEC") confirmed the historical releases of PCE, TCE, DCE, and other chlorinated solvents into the soil and groundwater at the Mid-Town Laundry Site as a direct result of the Defendants' prior dry cleaning operations.

8. On the basis of the site investigation and confirmation of PCE, TCE, DCE releases at the Mid-Town Laundry Site, Plaintiffs have been served with notice from the DEC that the Mid-Town Laundry Site constitutes an inactive hazardous waste disposal site.

9. Since the discovery of environmental contamination at the Mid-Town Laundry Site, Plaintiffs have been undertaking efforts to address the conditions identified by the DEC.

10. Plaintiffs never conducted any dry cleaning operations at the Mid-Town Laundry Site, and the DEC site investigation specifically identified the former dry cleaning business operated by Defendants as the area of environmental concern due to its historical usage of PCE, TCE and other related chlorinated solvents.

11. Within its analysis and report, the DEC also collected sampling data for the soil and groundwater at the Mid-Town Laundry Site. Groundwater concentrations for PCE, TCE and DCE at the Mid-Town Laundry Site were all determined to exceed New York State Groundwater Quality Standards, and the soil vapor sampling showed elevated levels of PCE and TCE.

12. A significant concentration of contaminants on the Mid-Town Laundry Site is the PCE in the soils and soil vapor in the area known as SS-01. The PCE contamination in the area known as SS-01 was due to an onsite discharge or discharges caused by Defendants' former dry cleaning operations at the Mid-Town Laundry Site. The total PCE contamination in the area of SS-0 is approximately 2,700,000 ug/m^3.

13. As such, and based upon the vertical and horizontal delineation of the contamination plume, the DEC has confirmed that the presence of PCE, TCE, and other related chlorinated solvents in the soil and groundwater at the Mid-Town Laundry Site entirely relates to Defendants' prior dry-cleaning operations.

14. The releases of PCE, TCE, DCE, and other chlorinated solvents at the Mid-Town Laundry Site not only predate Plaintiffs' operation of a coin-operated laundromat, but relate entirely to Defendants' former dry cleaning operations.

15. In fact, the releases and discharges of PCE, TCE, and DCE occurred prior to the transfer of the Mid-Town Laundry Site and was specifically identified and disclosed within the DEC site investigation.

16. The CVOs that were discharged and/or released from the Defendants' prior dry cleaning operations have adversely affected the Mid-Town Laundry Site. Spills and discharges of hazardous substances disposed of by Defendants have resulted in contamination of the soil, groundwater and soil vapors on the Mid-Town Laundry Site.

17. Plaintiffs have expended costs in investigating and remediating the soil, groundwater, and soil vapor contamination at the Mid-Town Laundry Site caused by Defendants' discharges of chlorinated solvents and other hazardous substances from their prior dry cleaning operations.

18. As a direct result of dry cleaning activities and operations at the Mid-Town Laundry Site by the Defendants, Plaintiffs have incurred and will continue to incur expenses and costs associated with the investigation and remediation of contaminated soils, groundwater, and soil vapors at the Site.

COUNT I

(CERCLA §107)

19. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 18 of the Complaint as if same were set forth at length herein.

20. The term "person" as used in §101 (21) CERCLA, 42 U.S.C. §9601 (21), is defined to include an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

21. Defendants are "persons" within the meaning of CERCLA because the former dry cleaning operations conducted at the Mid-Town Laundry Site have caused "hazardous substances," including but not limited to chlorinated solvents, to be released into the soils, groundwater, and soil vapors at the Mid-Town Laundry Site.

22. The term "release" as used in §101 (22) of CERCLA, 42 U.S.C. §9601 (22) is defined as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.

23. The term "facility" as used in §101 (9) of CERCLA, 42 U.S.C. §9601 (9), is defined as any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise comes to be located.

24. At all relevant times the Mid-Town Laundry Site is and has been a "facility" within the meaning of §101 (9) of CERCLA, 42 U.S.C. §9601 (9).

25. Hazardous substances have been released at the Mid-Town Laundry Site within the meaning of §101 (22) of CERCLA, 42 U.S.C. §9601 (22).

26. Pursuant to §107(a)(2) of CERCLA, 42 U.S.C. §9607 (a)(2), any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, shall be jointly and severally liable for costs incurred under CERCLA.

27. The term "owner or operator" as used in §101 (20)(A)(iii) of CERCLA, 42 U.S.C. §9601 (20)(A)(iii), in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means, is defined as any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.

28. Defendants are "owners or operators" within the meaning of CERCLA because they possessed title to the Mid-Town Laundry Site immediately prior to the Plaintiffs. This ownership of the Mid-Town Laundry Site is evidenced by a conveyance by deed to Plaintiffs, in or around 1988.

29. Defendants are strictly liable, without regard to fault, for the discharge of all hazardous substances at the Mid-Town Laundry Site, in that they caused and/or permitted such hazardous substances to be stored and released at said location in violation of CERCLA.

30. The aforesaid acts and conduct of the defendants are in violation of the laws of the United States of America and the State of New York and were committed without the authorization of the Environmental Protection Agency or the NJDEP.

31. The aforesaid acts and conduct of the defendants have caused, and will continue to cause, immediate, great and irreparable injury to the Mid-Town Laundry Site.

32. Consistent with the National Contingency Plan, Plaintiffs have incurred, including the cost of response actions as defined in §101(23), (24) and (25) of CERCLA, 42 U.S.C.

§96701 (23), (24) and (25) to address the release or threat of release of hazardous substances from the Mid-Town Laundry Site.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) All response costs and damages already paid by Plaintiffs, including without limitation, costs of investigation, testing, sampling, analyses, evaluation, monitoring, operation and maintenance for soil and groundwater operational units, oversight and consultants' fees;

(b) All response costs to be paid by Plaintiffs;

(c) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(d) Such other relief as this Court deems just and proper.

COUNT II

(CERCLA §113)

33. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 32 of the Complaint as if same were set forth at length herein.

34. Section 113(f)(1) of CERCLA, 42 U.S.C. §9613(f)(1) provides:

> Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under Section 9606 of this title or Section 9607 of this title.

35. Section 113(f)(3)(b) of CERCLA, 42 U.S.C. 9613(f)(3)(B) provides:

> A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek

> contribution from any person who is not party to a settlement referred to in paragraph (2).

36. Defendants are within the class of persons described in §107(a) of CERCLA, 42 U.S.C. §9607(a), based upon disposal of hazardous substances at the Site.

37. Consistent with the National Contingency Plan, Plaintiffs have incurred, is incurring and will continue to incur necessary response costs, including the cost of response actions as defined in §101(23), (24) and (25) of CERCLA, 42 U.S.C. §96701 (23), (24) and (25) to address the release or threat of release of hazardous substances from the Site.

38. Accordingly, Defendants are liable for their equitable share of the response costs incurred by the Plaintiffs, including without limitation, past costs, removal costs, response costs and attorneys' fees.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) Contribution for all response costs already paid by Plaintiffs including, without limitation, costs of investigation, testing, sampling, analyses, evaluation, monitoring, operation and maintenance for soil and groundwater operational units, oversight and consultant's fees;

(b) Contribution for all response costs to be paid by Plaintiffs;

(c) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(d) Such other relief as this Court deems just and proper.

COUNT III

(DECLARATORY JUDGMENT)

39. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 38 as if same were set forth at length herein.

40. Section 113(g)(2) of CERLCA, 42 U.S.C. §9613(g)(2), provides that in actions under §107 of CERCLA, 42 U.S.C. §9607, the Court shall enter a declaratory judgment on liability for response costs.

41. The declaratory judgment statute, 22 U.S.C. §2201-02, provides that the Court may declare the rights and other legal relations of any interested party seeking such a declaration.

42. Plaintiffs are entitled to a judgment declaring that Defendants are liable for all or for a portion of the past and future response costs incurred by plaintiff consistent with the National Contingency Plan, for all or a portion of the damages incurred by Plaintiffs, and for all or a portion of any sum which plaintiff has paid to the State of New York.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendants for:

(a) Declaring Defendants liable for all past and future response costs incurred by plaintiff consistent with the National Contingency Plan;

(b) Declaring Defendants liable for all cleanup and removal costs incurred by plaintiff;

(c) Declaring Defendants liable for all damages incurred or suffered by plaintiff;

(d) Awarding Plaintiffs pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(e) Such other relief as this Court deems just and proper.

COUNT IV
(STRICT LIABILITY)

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 42 as if same were set forth at length herein.

44. The Defendants are liable to the plaintiffs herein in that the Defendants carried on an ultra-hazardous or inherently dangerous activity on their properties which has resulted in harm and injury to the Mid-Town Laundry Site regardless of whether or not the Defendants exercised due care to prevent such harm.

45. The creation, storage, disposal, use or release of hazardous substances as described in this Complaint constitutes an ultra-hazardous or potentially dangerous activity all of which gives rise to liability to the Plaintiffs on the part of the Defendants based on principles of strict liability and tort predicated on common law principles indigenous to the use of the property.

46. The Defendants' activities as set forth in the previous paragraphs of this Count created an unreasonable risk of harm to the Site. The Plaintiffs suffered injuries and damages as a result thereof as more specifically set forth in other paragraphs of this Complaint which are incorporated herein.

WHEREFORE, Plaintiffs demands judgment against all Defendants for:

(a) All removal costs, cleanup costs and other damages incurred or suffered by plaintiff;

(b) Pre-judgment interest and costs of suit including, but not limited to attorneys' fees; and

(c) Such other relief as this Court deems just and proper.

COUNT V
(RESTITUTION)

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 46 as if same were set forth at length herein.

48. Defendants handled, used, treated, stored and disposed of hazardous substances so that the Mid-Town Laundry Site became contaminated and remains contaminated by the presence of hazardous substances and constitutes a threat to property and the environment.

49. By reason of the foregoing activities, Defendants are responsible for the investigation and remediation of contamination at the Site pursuant to 42 U.S.C. §9607 (a)(2) *et seq*.

50. Plaintiffs have incurred and will continue to incur expenses associated with defining the nature and extent of contamination at the Mid-Town Laundry Site and implementing measures to remedy said contamination as a result of the activities conducted by Defendants. In short, contamination at the Mid-Town Laundry Site is being investigated and remedied solely at Plaintiffs' expense.

51. By reason of the above activities, Plaintiffs have conferred and is conferring a benefit upon Defendants by assuming expenses and obligations for which the latter are responsible.

52. Equitable considerations require that Defendants provide appropriate restitution to Plaintiffs for the benefit he has conferred upon them.

WHEREFORE, Plaintiff demands judgment against Defendants for:

(a) Contribution for all response costs already paid by Plaintiffs;

(b) Contribution for all response costs to be paid by Plaintiffs, including operational and maintenance costs for soil and groundwater operational units;

(c) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(d) Such other relief as this Court deems just and proper.

COUNT VI
(CONTRIBUTION)

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 52 as if same were set forth at length herein.

54. Plaintiffs have been compelled to incur expenses to investigate and remediate contamination at the Mid-Town Laundry Site; contamination which was caused by the activities of the Defendants.

55. Defendants are liable for contribution towards all expenses incurred or to be incurred by Plaintiffs for the investigation and remediation of contamination at the Mid-Town Laundry Site.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) Contribution for all response costs already paid by Plaintiffs:

(b) Contribution for all response costs to be paid by Plaintiffs, including operational and maintenance costs for soil and groundwater operational units;

(c) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(d) Such other relief as this Court deems just and proper.

COUNT VII
(COMMON LAW INDEMNIFICATION)

56. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 55 as if same were set forth at length herein.

57. Plaintiffs have been compelled to incur expenses to investigate and remediate contamination at the Mid-Town Laundry Site; contamination which was caused by the activities of Defendants.

58. Plaintiffs are not responsible for the damages caused to the Mid-Town Laundry Site by Defendants and plaintiffs' liability for those damages are purely constructive, secondary or vicarious.

59. By reason of the foregoing, Defendants are responsible for indemnifying Plaintiffs for all expenses incurred or to be incurred by its investigation and remediation of contamination at the Site.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) Contribution for all response costs already paid by Plaintiffs;

(b) Contribution for all response costs to be paid by Plaintiffs, including operational and maintenance costs for soil and groundwater operational units;

(c) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(d) Such other relief as this Court deems just and proper.

COUNT VIII
(PUBLIC NUISANCE)

60. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 89 as if same were set forth at length herein.

61. The Mid-Town Laundry Site presents or presented a substantial offense or interference to the public or causes or caused damage to the public, so as to constitute or to have constituted a public nuisance. The activities of Defendants or its predecessors in using or disposing of hazardous substances at or to the Mid-Town Laundry Site created or contributed to a public nuisance which the named Defendants have failed to abate.

62. The conduct described above constitutes past and continuing violations of the common law of public nuisance.

63. The continuing presence of the Defendants' hazardous substances at the Mid-Town Laundry Site interferes with the exercise of rights common to all, and directly, particularly, and proximately injures the rights and property of the Plaintiffs in that the Plaintiffs have been compelled to incur response costs and damages to abate the conditions at the Site created by the Defendants and/or their predecessors.

64. The continuing presence of the Defendants' hazardous substances at the Sites caused and continues to cause irreparable harm and damage to Plaintiffs in the exercise of their rights.

65. Defendants are liable to the Plaintiffs for damages arising from the creation and perpetuation of the continuing public nuisance. In addition, Defendants are responsible under the common law of public nuisance for abatement of the nuisance at the Sites.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) All removal costs, cleanup costs and other damages incurred or suffered by Plaintiffs;

(b) Pre-judgment interest and costs of suit including, but not limited to attorneys' fees; and

(c) Such other relief as this Court deems just and proper.

COUNT IX
(NEGLIGENCE)

66. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 65 as if fully set forth herein.

67. The Defendants herein owed a duty to store, treat, dispose and otherwise manage their hazardous substances in such a manner as to prevent any harm or injury to the public health

and welfare and to the environment by preventing and/or controlling releases and threatened releases of hazardous substances at the Mid-Town Laundry Site.

68. Defendants knew or should have known that the manner in which they stored, treated, disposed of otherwise managed their hazardous substances could forseeably cause releases of hazardous substances into the environment.

69. As a direct and proximate result of the Defendants' negligent hazardous substances management practices, plaintiff has incurred and will continue to incur expenses associated with defining the nature and extent of contamination at the Mid-Town Laundry Site and implementing measures to remedy said contamination caused by the activities of Defendants.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) All removal costs, cleanup costs and other damages incurred or suffered by Plaintiffs;

(b) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(c) Such other relief as this Court deems just and proper.

COUNT X
(TORTIOUS HARM TO PROPERTY AND BUSINESS)

70. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 69 as if fully set forth herein.

71. The Defendants herein owed a duty to store, treat, dispose and otherwise manage their hazardous substances in such a manner as to prevent any harm or injury to the public health and welfare and to the environment by preventing and/or controlling releases and threatened releases of hazardous substances at the Mid-Town Laundry Site.

72. Defendants knew or should have known that the manner in which they stored, treated, disposed of otherwise managed their hazardous substances could foreseeably cause releases of hazardous substances into the environment.

73. Plaintiffs have lost business opportunities and rental income because of the releases of hazardous substances discharged by the Defendants at the Mid-Town Laundry Site.

74. Plaintiffs' business revenues have declined because of the discharges of hazardous substances and deleterious environmental conditions left by Defendants at the Mid-Town Laundry Site.

75. As a direct and proximate result of the Defendants' discharges of hazardous substances, plaintiffs have incurred and will continue to incur lost business revenue and rental income associated with the environmental conditions at the Mid-Town Laundry Site.

WHEREFORE, Plaintiffs demand judgment against Defendants for:

(a) All removal costs, cleanup costs and other damages incurred or suffered by Plaintiffs;

(b) Pre-judgment interest and costs of suit including but not limited to attorneys' fees; and

(c) Such other relief as this Court deems just and proper.

COFFEY & ASSOCIATES
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Attorneys for Plaintiffs, Mid-Town Laundry, LLC, and State-Albany Properties, LLC

By: ______________________
Gregory J. Coffey

Dated: March 23, 2017

JURY DEMAND

Plaintiffs hereby demand trial by jury on all counts of the Complaint.

COFFEY & ASSOCIATES
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Attorneys for Plaintiffs, Mid-Town Laundry, LLC, and State-Albany Properties, LLC

By: ______________________
Gregory J. Coffey

Dated: March 23, 2017

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Gregory J. Coffey, Esq. of the law firm of Coffey & Associates, 310 South Street, Morristown, New Jersey as trial counsel in this matter.

COFFEY & ASSOCIATES
310 South Street
Morristown, New Jersey 07960
Attorneys for Plaintiffs, Mid-Town Laundry, LLC, and State-Albany Properties, LLC

By: ______________________
Gregory J. Coffey

Dated: March 23, 2017